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**certified letter, return receipt**

**27 October 1997**

Office of the Secretary  
Federal Communications Commission  
Washington, D.C. 20554

With respect,

This is in reference to the Notice of Proposed Rule Making, released August 19, 1997, MN Docket No. 97-182, In the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Transmission Facilities.

Whitman County, Washington is in the process of updating its County Comprehensive Plan and Zoning Ordinance. As such, our Planning Commission has been working on an update to include a Telecommunications Element. We are attempting to revise our land use plan and regulations so that the County can promote and facilitate the benefits of the telecommunications industry, while at the same time, allow our public to influence decisions on the siting of these facilities.

Local land use regulations generally serve two purposes: protecting property investments and assuring compatibility with the environment. The public is demanding from government the right to influence decisions. For telecommunications, in the State of Washington in general and in this County in particular, public participation is enabled through the zoning ordinance conditional use process and the state's environmental disclosure requirements. State law sets forth the public notice requirements and the minimum time from date of legal notice publication until a public hearing can be held. There are very valid reasons for these state statutes.

It is not unusual for regulations to have a method of preemption in case of an emergency, such as flood, earthquake, and so forth. However, this petition for preemption seems to be based on an artificial emergency, a man-made deadline. If one industry such as telecommunication facilities are to be exempted from local control, then why should there be local land use regulations for the rest of society?

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You seek answers to your questions. Your question is written in italics and our answer is given in bold print, as follows:

*Should we (FCC) preempt local regulation for all broadcast facilities?* **No.**

*Should the preemption be limited to construction of DTV transmission facilities and the relocation of those FM radio facilities displaced by DTV?* **There should be no preemption for either.**

*Are there circumstances in which it is appropriate for the Commission to preempt state and local regulation of the siting or construction of transmission facilities?* **Perhaps. If a local ordinance does not allow the industry to function, it seems like there should be an ability for FCC to over-rule it. However, keep in mind that the lowest level of government is most accountable to citizens, and a preemption by a federal agency dilutes this accountability.**

*Should federal regulation preempt local regulation intended for aesthetic purposes?* **No. One of the functions of zoning is to protect existing property values. A decline of the aesthetic value can lower the market value of private property. If a local land use code is written to allow public debate and consideration of the impact on aesthetics, then this should not be preempted by the federal government.**

*Are the time frames proposed by Petitioners reasonable?* **No. For example, Whitman County would find it difficult to receive, process and reply to any request, let alone issue a complete denial with supporting documents sent by certified letter to the applicant within 5 days. This absurd proposal by the Petitioners assumes that they have priority over all other applicants seeking permits, and if granted, would create special privilege for a small sector of private industry.**

*Should the FCC preempt state and local government authority where they fail to act within certain time periods?* **Perhaps. The State of Washington Legislature recently enacted regulatory reform legislation that requires a decision on an application within 120 days from the date a complete application is submitted. This law recognizes the difference between the government's time clock ticking, and the applicant's time, akin to a chess game clock. If any state does not have a reasonable time frame, then it seems fair for the federal government to impose one.**

*If so, what should be those time periods?* **We suggest the Commission review the experience of the State of Washington and its local governments. Other states may have relevant experience, also.**

*What constraints, if any, are there on the ability of state and local governments to meet the expedited procedures sought by Petitioners?* **The constraints of public notice time and public participation were previously noted. For conditional use hearings, Whitman County relies on a five-person Board of Adjustment, who are citizen volunteers appointed by the Board of County Commissioners. Their record of decision-making has been admirable, taking into consideration the applicant's request and balancing that with the concerns of the citizens. The results have been good for Whitman County. Preemption would rob the citizens of this process.**

**We wonder, if the FCC grants preemption, whether or not there will be legal challenges to that decision? If the Petitioners gain the right to put up a tower, for example, next to your house without any local public hearing and due process for you, then how can local codes be justified in keeping your neighbor from setting**

**up a chain-saw firewood cutting business, a noisy dog kennel, a swine feedlot, and so forth?**

*Is there an appropriate role for the Commission in resolving disputes between localities and licensees with respect to tower siting issues? Perhaps.*

*What is the nature of that role -- arbitrator, mediator or provider of a forum? Good question. This is certainly better than outright preemption. We would like more information on which of these roles has succeeded in other land use disputes before recommending one of these roles. Whichever role is chosen, it is vital that citizens have the right to be heard and to influence the decision.*

We thank you for the opportunity to present these comments. We are concerned, when it comes to rule making decisions regarding local land use, that few people are aware of the FCC's proposed action, and the implications it has for their property and lives. Had we not been engaged in the update to the County Plan and Codes, and had we not been informed of your notice by one of the people working with us on our telecommunications chapter, it is likely that we would have missed your deadline for comment.

Sincerely,



Mark Bordsen  
County Planner

copy: FCC Members (9 copies)  
Phil Merrell, Director of Public Works

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